



**Virginia  
Regulatory  
Town Hall**

**Notice of Intended Regulatory Action  
Agency Background Document**

<b>Agency Name:</b>	15
<b>VAC Chapter Number:</b>	30
<b>Regulation Title:</b>	Virginia Lead-Based Paint Activities Regulations
<b>Action Title:</b>	Pre-NOIRA
<b>Date:</b>	March 20, 2000

This information is required prior to the submission to the Registrar of Regulations of a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B). Please refer to Executive Order Twenty-Five (98) and Executive Order Fifty-Eight (99) for more information.

**Purpose**

*Please describe the subject matter and intent of the planned regulation. This description should include a brief explanation of the need for and the goals of the new or amended regulation.*

The subject matter of the planned regulation amendments is to continue to establish procedures and requirements for the approval of accredited lead training programs; for the licensure of individuals and firms to engage in lead-based paint activities; and for the establishment of standards for performing lead-based paint activities.

The intent of the planned regulation amendments is to assure the existence of an infrastructure of trained and qualified individuals and firms to remove lead-based paint hazards in such a manner so as to reduce the hazard to humans, especially children under six years old.

Section 54.1-501 (6) of the Code of Virginia mandates the Virginia Board for Asbestos and Lead (Board) to promulgate lead-based paint regulations that are no more stringent than the lead-based paint regulations promulgated by the United States Environmental Protection Agency (EPA). In the event that the EPA adopts any final regulations subsequent to the promulgation by the Board of related regulations, then the Board shall, as soon as is practicable, amend its existing regulations so as to be not more stringent than such EPA regulations.

The Board's current regulations became effective on November 13, 1996. The current EPA regulations became effective on August 31, 1998.

The goal of the planned amendments to the Board's regulations is to make the Board's regulations no more stringent than the current EPA regulations.

The planned regulation amendments will result in a deregulation of certain licensing categories that are currently regulated. The deregulation is a direct result of the EPA not finalizing certain portions of its proposed regulations, and Virginia's statutory mandate to be "no more stringent than the federal regulations."

### Basis

*Please identify the state and/or federal source of legal authority to promulgate the contemplated regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. The correlation between the proposed regulatory action and the legal authority identified above should be explained. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided.*

On October 28, 1992, the U.S. Congress enacted the Residential Lead-Based Paint Hazard Reduction Act of 1992, also known as Title X of the Housing and Community Development Act. This Act also amended the Toxic Substances Control Act (TSCA) to include a new subchapter, Subchapter IV, 15 U.S.C. 2681-2692. (Please see: <http://www4.law.cornell.edu/uscode/15/ch53.html>). TSCA Subchapter IV directed the EPA to promulgate regulations, including the lead-based paint activities training, certification and accreditation requirements, work practice standards, and a Model State Program (MSP), which States should be encouraged to reference and use as guidance in order to develop their own Federally authorized lead-based paint activities programs.

As a result of Title X, the EPA promulgated regulations pursuant to sections 402 and 404 of TSCA (see sections 2682 and 2684 respectively at: <http://www4.law.cornell.edu/uscode/15/ch53.html>). Section 402 regulations were promulgated to ensure that individuals conducting lead-based paint activities in target housing and child-occupied facilities are properly trained and certified; that training programs throughout the nation providing instruction in such activities are accredited; and that these activities are conducted according to reliable, effective and safe work practice standards. Section 404 regulations require each State to seek authorization from the EPA to administer and enforce the regulations developed by the State pursuant to section 402 of TSCA, or to submit to the EPA's administration and enforcement of the federal regulations promulgated pursuant to section 402 of TSCA. (See <http://www.epa.gov/docs/epacfr40/chapt-I.info/subch-R/40P0745.pdf> for the EPA regulation). Virginia applied for section 404 authorization on October 30, 1998 and was informed officially of its approval as an EPA-authorized State by letter dated February 19, 1999.

It should be noted that the above-referenced EPA final regulations did not fully implement the provisions of TSCA or the provisions of the EPA proposed regulations. The EPA proposed regulations covered "target housing," "public buildings," "commercial buildings," and "superstructures." The final EPA regulations covered only "target housing" and a new category

of structure called "child-occupied facilities." Regulations for the remaining structure types were held in abeyance and are now referred to by the EPA as the "building and structures" regulations or, simply, "B&S."

Chapter 5 of Title 54.1 of the Code of Virginia (specifically Section 54.1-501 (6)) mandates that the Board for Asbestos and Lead administer and enforce the provisions of the Chapter; gives the Board the powers and duties to set fees, procedures, and qualifications for the issuance and renewal of licenses; and mandates that the Board promulgate regulations to implement the Chapter and the Federal Lead-Based Paint Activities Regulatory program. As mentioned under "Purpose" above, the Board is also mandated to revise its regulations to be no more stringent than any EPA regulations promulgated subsequent to the Board's regulations. (Section 54.1-501 may be found at: <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+54.1-501>).

Because Virginia's existing regulations are based on the EPA proposed regulations, significant amendments are necessary to remove the provisions applying to public buildings, commercial buildings and superstructures, and to add provisions that would apply to child-occupied facilities.

The imperative form of the verb (shall) is used in the Virginia statute which makes the rulemaking provisions mandatory rather than discretionary.

## Substance

*Please detail any changes that would be implemented: this discussion should include a summary of the proposed regulatory action where a new regulation is being promulgated; where existing provisions of a regulation are being amended, the statement should explain how the existing regulation will be changed. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of citizens. In addition, a statement delineating any potential issues that may need to be addressed as the regulation is developed shall be supplied.*

The planned amendments to the Virginia Lead-Based Paint Activities Regulations are intended to amend an existing regulation, and will represent a deregulation of certain licensing categories that are currently regulated under the Virginia regulations. This deregulation is a direct result of the EPA not finalizing certain portions of its proposed regulations, and Virginia's statutory mandate to be "no more stringent than the federal regulations."

The planned amendments will implement the final EPA regulations mentioned under "Basis" above by deleting the current Virginia regulations' provisions concerning public buildings, commercial buildings and superstructures, and by adding the provisions to implement the final EPA regulations' requirements for target housing and child-occupied facilities. Other amendments are planned to implement other provisions of the final EPA regulations that are different from the provisions of the proposed EPA regulations. In addition, the current regulations will be evaluated for effectiveness and continued need, which will likely result in additional amendments being made in order to assure the intrusion of the regulations into the conduct of commerce is held to an absolute minimum.

## Alternatives

*Please describe, to the extent known, the specific alternatives to the proposal that have been considered or will be considered to meet the essential purpose of the action.*

In promulgating lead-based paint regulations, the Board was and will be faced with dual challenges. The first is the EPA standard that requires state programs and regulations to be at least as protective as the federal program and regulations in order to qualify for EPA authorization. The second is the Virginia statute that requires the Virginia program and regulations to be no more stringent than the EPA program and regulations. As a result, the Board has very little of the latitude which most Virginia regulatory boards enjoy while developing regulations.

In every case, the Board will consider whether there is a less burdensome alternative that is no more stringent than the EPA Final Rule, but that also is as protective as the EPA regulations. The EPA regulations are silent in the areas of fee amounts, application processing and procedures, and conflicts of interest between the various categories of certificates. In these areas, the Board will carefully weigh the impact of the regulations on the industry with the benefit to the public's protection.

Virginia is an EPA authorized state. The federal regulations state that the EPA Administrator may approve an application for authorization of a state program only after finding that the state program is at least as protective of human health and the environment as the federal program established according to the mandates. State programs that fail to meet this standard will be rejected. The EPA authorization can be withdrawn if Virginia's regulations are found to be NOT as protective as the EPA regulations.

The planned amendments will be taken word-for-word from the final EPA regulations whenever possible to assure that the Virginia regulations remain at least as protective as the federal regulations.

## Family Impact Statement

*Please provide a preliminary analysis of the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

No impact on families has been identified.